

07-01-2002



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FORM PTO-1595 (Rev. 6-93) OMB No. 0651-0011 (exp. 4/94) M&G- 50036.00000006 / P204

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

To the Commissioner of Patents and Trademarks, Please record the attached original documents or copy thereof.

| | |
|---|--|
| <p>1. Name of conveying party(ies):</p> <p>eCash Technologies, Inc.</p> <p style="font-size: 2em; margin-left: 100px;">06/24/02</p> | <p>2. Name and address of receiving party(ies):</p> <p>InfoSpace, Inc. 601 108th Avenue N.E., Suite 1200 Bellevue, WA 98004</p> |
| <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | <p>Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> |

3. Nature of conveyance:

| | |
|--|---|
| <input checked="" type="checkbox"/> Assignment | <input type="checkbox"/> Merger |
| <input type="checkbox"/> Security Agreement | <input type="checkbox"/> Change of Name |
| <input checked="" type="checkbox"/> Other: Attachments A & B | |

Execution Date: February 7, 2002

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

| | |
|---|--|
| <p>A. Patent Application No.(s)</p> <p><u>07/504,878</u>, filed April 5, 1990</p> | <p>B. Patent No.(s)</p> <p>4,987,593, Granted January 22, 1991</p> |
|---|--|

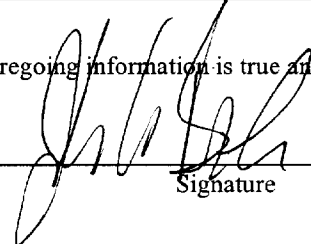
Additional numbers attached? Yes No

| | |
|---|--|
| <p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Name: John W. Branch Address: Merchant & Gould P.O. Box 2903 Minneapolis, MN 55402-0903</p> | <p>6. Total number of applications and patents involved: 1</p> <p>7. Total fee (37 CFR 3.41): \$40.00</p> <p><input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> Authorized to be charged to deposit account</p> <p>8. Please charge any additional fees or credit any overpayments to our Deposit account number: 13-2725</p> |
|---|--|

DO NOT USE THIS SPACE

9. Statement and signature:

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

| | | |
|---|---|----------------------------------|
| <p>John W. Branch; Reg. No.: 41,633</p> <p>Name of Person Signing</p> |  <p>Signature</p> | <p>June 20, 2002</p> <p>Date</p> |
|---|---|----------------------------------|

Total number of pages including cover sheet, attachments, and document: 27

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Box Assignments Director - U.S. Patent and Trademark Office Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of information systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

06/28/2002 LMJELLER 00000207 07504878

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40.00 OP

PATENT REEL: 13028 FRAME: 0657

ASSIGNMENT OF PATENTS

WHEREAS, eCash Technologies, Inc., a Delaware corporation, having a place of business at 19015 North Creek Parkway, Suite 105, Bothell, Washington 98105, U.S.A. (hereinafter the "CONVEYING PARTY"), is the present assignee in interest of the inventions claimed in the United States and foreign patents set forth on ATTACHMENT A hereto (hereinafter the "Patents");

WHEREAS, the CONVEYING PARTY was previously known as Digicash Acquisition Corporation, and it acquired certain of the Patents under such corporate name;

WHEREAS, the CONVEYING PARTY subsequently changed its name to its current corporate name in accordance with the Articles of Amendment attached hereto as ATTACHMENT B;

AND WHEREAS, InfoSpace, Inc., a Delaware corporation, having a place of business at 601 108th Avenue N.E., Suite 1200, Bellevue, Washington 98004, U.S.A. (hereinafter the "RECEIVING PARTY"), has acquired from the CONVEYING PARTY all right, title and interest in and to the Patents pursuant to that certain Asset Purchase Agreement, dated as of February 7, 2002, by and among the RECEIVING PARTY, the CONVEYING PARTY and certain of the principal stockholders of the CONVEYING PARTY.

NOW, THEREFORE, effective on February 7, 2002, for good and valuable consideration, the receipt of which is hereby acknowledged, the CONVEYING PARTY does hereby sell, assign and transfer unto the RECEIVING PARTY all right and title to and interest in the Patents (in the United States and the respective countries set forth in ATTACHMENT A) solely for the RECEIVING PARTY's use and benefit and for the use and benefit of its legal representatives to the full end of the term or terms for which the Patents may be granted, as fully and entirely as the same would have been held by the CONVEYING PARTY had this assignment and sale not been made.

(The remainder of this page has been intentionally left blank.)

This Assignment of Patents has been executed at Belleuve, Washington, this 7th day of February 2002.

ECASH TECHNOLOGIES, INC.,

By: [Signature]
Name: Andrew Haring
Title: Secretary

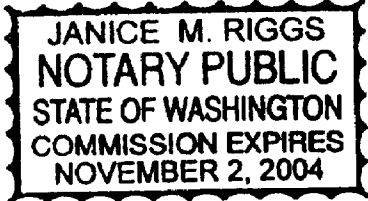
STATE OF Washington

COUNTY OF King

On Feb. 7, 2002 before me, Janice Riggs, personally appeared Andrew Haring, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(Seal)



[Signature]

Signature

ATTACHMENT A

The Patents

**ATTACHMENT A
Issued U.S. Patents**

| TITLE | REG. NO. | SERIAL NO. | FILING DATE | GRANT DATE |
|--|-----------------|-------------------|--------------------|-------------------|
| ONE-SHOW BLIND SIGNATURE SYSTEMS | 4,914,698 | 07/384,092 | July 24, 1989 | April 3, 1990 |
| ONE-SHOW BLIND SIGNATURE SYSTEMS | 4,987,593 | 07/504,878 | April 5, 1990 | January 22, 1991 |
| PRIVATE SIGNATURE AND PROOF SYSTEMS | 5,493,614 | 08/237,098 | May 3, 1994 | February 20, 1996 |
| COMPACT ENDORSEMENT SIGNATURE SYSTEMS | 5,434,919 | 08/179,962 | January 11, 1994 | July 18, 1995 |
| LIMITED TRACEABILITY SYSTEMS | 5,712,913 | 08/193,500 | February 8, 1994 | January 27, 1998 |
| LIMITED TRACEABILITY SYSTEMS | 5,878,140 | 08/944,637 | October 6, 1997 | March 2, 1999 |
| LIMITED TRACEABILITY SYSTEMS | 5,781,631 | 08/910,123 | August 12, 1997 | July 14, 1998 |

| | | | | |
|--|-----------|------------|-------------------|-----------------|
| BLIND SIGNATURE SYSTEMS | 4,759,063 | 06/524,896 | August 22, 1983 | July 19, 1988 |
| RETURNED- VALUE BLIND SIGNATURE SYSTEMS | 4,949,380 | 07/260,053 | October 20, 1988 | August 14, 1990 |
| UNDENIABLE SIGNATURE SYSTEMS | 4,947,430 | 07/123,703 | November 23, 1987 | August 7, 1990 |
| CARD- COMPUTER MODERATED SYSTEMS | 4,759,064 | 06/784,999 | October 7, 1985 | July 19, 1988 |
| CARD- COMPUTER MODERATED SYSTEMS | 4,759,063 | 06/524,896 | August 22, 1983 | July 19, 1988 |
| CARD- COMPUTER MODERATED SYSTEMS | 4,926,480 | 07/198,315 | May 24, 1988 | May 15, 1990 |
| BLIND UNANTICIPATED SIGNATURE SYSTEMS | 4,759,064 | 06/784/999 | October 7, 1985 | July 19, 1988 |
| COMPACT ENDORSEMENT SIGNATURE SYSTEMS | 5,434,919 | 08/179,962 | January 11, 1994 | July 18, 1995 |

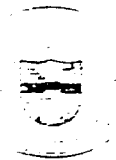
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|---|-----------|------------|------------------|--------------------|
| SELECTED EXPONENT SIGNATURE SYSTEMS | 4,996,711 | 07/368,677 | June 21, 1989 | February 26, 1991 |
| UPREDICTABLE BLIND SIGNATURE SYSTEMS | 4,991,210 | 07/347,303 | May 4, 1989 | February 5, 1991 |
| OPTIONALLY MODERATED TRANSACTION SYSTEMS | 5,131,039 | 07/609,519 | November 5, 1990 | July 14, 1992 |
| OPTIONALLY MODERATED TRANSACTION SYSTEMS | 5,276,736 | 07/912,193 | July 13, 1992 | January 4, 1994 |
| CRYPTOGRAPHIC IDENTIFICATION, FINANCIAL TRANSACTION AND CREDENTIAL DEVICE | 4,529,870 | 06/392,271 | June 25, 1982 | July 16, 1985 |
| PARTITIONED INFORMATION STORAGE SYSTEMS WITH CONTROLLED RETRIEVAL | 5,956,400 | 08/684,263 | July 19, 1996 | September 21, 1999 |

ATTACHMENT B
Articles of Amendment

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "ECASH TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF DECEMBER, A.D. 2000, AT 11 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



Edward J. Freel

Edward J. Freel, Secretary of State

1046298 8110

001648840

AUTHENTICATION: 1875879

DATE: 12-22-00

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

ECASH TECHNOLOGIES, INC.

eCash Technologies, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the Corporation is eCash Technologies, Inc. eCash Technologies, Inc. was originally incorporated under the name DigiCash Acquisition Corporation, and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on May 25, 1999.

2. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Amended and Restated Certificate of Incorporation of the Corporation.

3. The text of the Amended and Restated Certificate of Incorporation as heretofore amended or supplemented is hereby restated and further amended to read in its entirety as follows:

ARTICLE I

NAME OF CORPORATION

The name of this Corporation is:

eCash Technologies, Inc.

ARTICLE II

REGISTERED OFFICE

The address of the registered office of the Corporation in the State of Delaware is 9 East Loockerman Street, in the City of Dover 19901, County of Kent, and the name of its registered agent at that address is National Registered Agents, Inc.

ARTICLE III

PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

45011904_1.DOC

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 11:00 AM 12/22/2000
001645840 - 3046298

PATENT
REEL: 13028 FRAME: 0666

ARTICLE IV

AUTHORIZED CAPITAL STOCK

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 162,000,000 shares, consisting of (i) 90,000,000 shares of Common Stock, \$0.01 par value per share ("Common Stock"), and (ii) 72,000,000 shares of Preferred Stock, \$0.01 par value per share ("Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series, including without limitation, any series of Preferred Stock specified herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors, subject to any preferential dividend rights of any then outstanding Preferred Stock.

4. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

B. PREFERRED STOCK

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed in the Certificate of Incorporation (the "Certificate of Incorporation"), or in the resolution or resolutions providing for the issuance of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided herein or by law. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided. The Preferred Stock shall be divided into series.

Eight Million Five Hundred Thousand (8,500,000) shares of the authorized and issued Preferred Stock of the Corporation have been designated "Series A Convertible Preferred Stock" (the "Series A Preferred Stock").

Ten Million (10,000,000) shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "Series B Convertible Preferred Stock" (the "Series B Preferred Stock").

Thirty-Five Million One-Hundred Seventy-Seven Thousand Nine-Hundred Thirty Two (35,177,932) shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "Series C-1 Convertible Preferred Stock" (the "Series C-1 Preferred Stock") and Fifteen Million One-Hundred Fifty-Eight Thousand Eight Hundred Sixty-Five (15,158,865) shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "Series C-2 Convertible Preferred Stock" (the "Series C-2 Preferred Stock," and together with the Series C-1 Preferred Stock, the "Series C Preferred Stock").

Authority is hereby expressly granted to the Board of Directors from time to time to create one or more series of Preferred Stock and to issue Preferred Stock in series, and in connection with the designation of any such series, by resolution or resolutions providing for the issue of shares of such series, to determine and fix such voting powers, full or limited, or lack of voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by law. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law. No vote of the holders of the Preferred Stock or Common Stock shall be a prerequisite to the issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of the Certificate of Incorporation, unless expressly provided in the Certificate of Incorporation or in any designation creating any series.

The rights, preferences, powers, privileges and restrictions, qualifications and limitations of the Preferred Stock are as follows:

1. Dividends. So long as any shares of Series B Preferred Stock or Series C Preferred Stock remain outstanding, the holders of shares of Series B Preferred Stock and the holders of shares of Series C Preferred Stock shall be entitled to receive, before any dividends shall be paid upon or set aside for Common Stock or for the Series A Preferred Stock, when and as declared by the Board of Directors of the Corporation out of funds legally available for that purpose, non-cumulative dividends payable in cash equal to eight percent (8%) of the Series B/C Preference Amount (as defined in Section 2). After such payment of dividends to the holders of shares of Series B Preferred Stock and to the holders of Series C Preferred Stock has been made, other declared preferential dividends on any other series of Preferred Stock, if any, shall be paid. Any further dividends shall be paid pro-rata to the holders of Common Stock and the holders of Preferred Stock, calculated on an as converted basis.

2. Liquidation, Dissolution or Winding Up.

a. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series B Preferred Stock and the holders

of shares of Series C Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, and before any payment shall be made to the holders of Series A Preferred Stock and Common Stock or any other class or series of stock of the Corporation ranking on liquidation junior to the Series B Preferred Stock and to the Series C Preferred Stock (such Series A Preferred Stock and Common Stock and other stock collectively referred to as "Series B/C Junior Stock"), by reason of their ownership thereof, an amount equal to \$2.94 per share and \$0.4123 per share, respectively, plus any declared, accrued and unpaid dividends (subject to appropriate adjustment in the event of any stock dividend, stock split, combination, subdivision or other similar recapitalization affecting the shares of Series B Preferred Stock or the Series C Preferred Stock) ("Series B/C Preference Amount"). If the assets of the Corporation available for distribution shall be insufficient to pay the holders of Series B Preferred Stock and Series C Preferred Stock the full Series B/C Preference Amount to which they shall be entitled, the holders of shares of Series B Preferred Stock and shares of Series C Preferred Stock, shall share ratably in any distribution of the assets of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. Thereafter, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, subject to the payment in full of the Series B/C Preference Amount, *pari passu* with the payment of all amounts required to be distributed to the holders of any class or series of stock of the Corporation ranking on liquidation *pari passu* with the Series A Preferred Stock (such stock collectively referred to as "Series A Parity Stock"), and before any payment shall be made to the holders of Common Stock or any other class or series of stock of the Corporation ranking on liquidation junior to the Series A Preferred Stock (such Common Stock and other stock collectively referred to as "Series A Junior Stock"), by reason of their ownership thereof, an amount equal to \$1.00, plus any declared, accrued and unpaid dividends (subject to appropriate adjustment in the event of any stock dividend, stock split, combination, subdivision or other similar recapitalization affecting the shares of Series A Preferred Stock) ("Series A Preference Amount"). If the assets of the Corporation available for distribution to holders of Series A Preferred Stock and Series A Parity Stock shall be insufficient to pay the holders the full amount to which they shall be entitled, the holders of shares of Series A Preferred Stock and shares of Series A Parity Stock, if any, shall share ratably in any distribution of the assets of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

b. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of the Series B/C Preference Amount and of the Series A Preference Amount (or such other amount paid in lieu thereof pursuant to Section 2.d below), any remaining funds and assets of the Corporation legally available for distribution to shareholders shall be distributed ratably among the holders of Preferred Stock (on an as converted basis) and the holders of Common Stock.

c. Any transaction or series of related transactions (including without limitation any sale of stock, reorganization, merger or consolidation) that results in the (i) transfer of 50% or more of the outstanding voting power of the Corporation or (ii) a sale of all or substantially all of the assets of the Corporation shall be deemed, in the discretion of the holders

of the majority of the Series A Preferred Stock, the Series B Preferred Stock and the Series C-1 Preferred Stock, voting separately as classes, to be a liquidation, dissolution or winding up of the Corporation for purposes of this Section 2 solely with respect to the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock, respectively. The amount deemed distributed to the holders of Preferred Stock upon any such merger or consolidation shall be the cash or the value of the property, rights or securities distributed to such holders by the acquiring person, firm or other entity. The value of such property, rights or other securities shall be determined in good faith by the Board of Directors of the Corporation.

d. In the event that the amount that holders of Preferred Stock would receive in liquidation, dissolution or winding up of the Corporation, were such holders to convert their shares immediately prior to such liquidation, dissolution or winding up, exceeds the amount that such holders are entitled to receive pursuant to Section 2.a above, then the amount such holders shall be entitled to receive in such liquidation, dissolution or winding up pursuant to Section 2.a shall be the amount that such holders would receive were such holders to convert their shares (in lieu of the amount such holders would otherwise receive pursuant to Section 2.a above).

3. Voting. Each holder of outstanding shares of Preferred Stock (other than the Series C-2 Preferred Stock) shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible (as adjusted from time to time pursuant to Section 5 below) at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law or in Section 4 below, holders of Preferred Stock shall vote together on an as-converted basis with the holders of Common Stock as a single class. The Series C-2 Preferred Stock shall not have any voting rights and the holders thereof shall not be entitled to any votes with respect to such shares or the shares of Common Stock into which such shares are convertible, except as set forth in Sections 4.a and 7.a, below. Notwithstanding the foregoing, upon mandatory conversion of all shares of Preferred Stock into Common Stock, as set out in Section 7.a, the Common Stock issuable upon conversion of the Series C-2 Preferred Stock shall have the same voting rights as all other Common Stock.

4. Protective Provisions.

a. Preferred Majority Votes. So long as any shares of Series C-1 Preferred Stock remain outstanding, the Corporation shall not, without the written consent or affirmative vote of the holders of more than 50% of the then outstanding shares of Series C-1 Preferred Stock, voting separately as a single class, (i) alter or change the powers, preferences or special rights of the Series C Preferred Stock so as to affect it adversely, or (ii) increase or decrease the aggregate number of authorized shares of Series C Preferred Stock. So long as any shares of Series C-2 Preferred Stock remain outstanding, the Corporation shall not, without the written consent or affirmative vote of the holders of more than 50% of the then outstanding shares of Series C-2 Preferred Stock, voting separately as a single class, (i) alter or change the powers, preferences or special rights of the Series C-2 Preferred Stock so as to affect it adversely, (ii) increase or decrease the aggregate number of authorized shares of Series C-2 Preferred Stock or (iii) take any action that differentiates the Series C-1 Preferred Stock from the Series C-2 Preferred Stock other than with respect to voting rights. So long as at least 1,000,000 shares of

Series B Preferred Stock remain outstanding, the Corporation shall not, without the written consent or affirmative vote of the holders of more than 50% of the then outstanding shares of Series B Preferred Stock, (i) alter or change the powers, preferences or special rights of the Series B Preferred Stock so as to affect it adversely, or (ii) increase or decrease the aggregate number of authorized shares of Series B Preferred Stock. For this purpose, the authorization or issuance of any other series of Preferred Stock with preference or priority over, or on par with, the Series B Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation shall not be deemed to alter or change the powers, preferences or special rights of the Series B Preferred Stock so as to affect it adversely. So long as 1,500,000 shares of Series A Preferred Stock remain outstanding, the Corporation shall not, without the written consent or affirmative vote of the holders of more than 80% of the then outstanding shares of Series A Preferred Stock (i) alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect it adversely, (ii) increase or decrease the aggregate number of authorized shares of Series A Preferred Stock.

b. Series C-1 Approval. So long as 4,000,000 shares of Series C-1 Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination, subdivision or other similar recapitalization affecting the shares of Series B Preferred Stock or the Series C Preferred Stock) remain outstanding, the Corporation shall not, without the written consent or affirmative vote of the holders of a majority of the outstanding Series C-1 Preferred Stock, voting separately as a single class:

(i) take any action that authorizes, creates or issues shares of any class or series having powers, preferences or special rights senior to or pari passu with the Series C-1 Preferred Stock;

(ii) take any action that reclassifies any outstanding shares into shares having powers, preferences or rights senior to or pari passu with the Series C-1 Preferred Stock;

(iii) redeem or repurchase any shares of Common Stock (other than shares of Common Stock from officers, directors, employees or consultants of the Corporation upon termination of employment or service pursuant to the Corporation's stock incentive plans or other repurchase agreements);

(iv) authorize or effect the declaration or payment of any dividend on any shares of Common Stock;

(v) enter into any transactions with an officer, director or other affiliate of the Corporation;

(vi) make any fundamental change in the nature of the business of the Corporation;

(vii) effect any merger, corporate reorganization, sale of control, or any transaction in which all or a material portion of the stock or the principal assets of the Corporation and/or one of its subsidiaries are sold;

(viii) effect any increase in the size of the Board;

(ix) make any acquisition or investment, or incur debt in excess of \$500,000 in a single transaction or in a series of related transactions.

5. Optional Conversion. The holders of the Preferred Stock shall have conversion right as follows (the "Conversion Right"):

a. Each share of Series C-1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into that number of fully paid and non-assessable shares of Common Stock obtained by dividing \$0.4123 by the Series C Conversion Price (as defined below) and by surrender of the shares so to be converted as provided herein. Each share of Series C-1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into one share of Series C-2 Preferred Stock. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into that number of fully paid and non-assessable shares of Common Stock obtained by dividing \$2.94 by the Series B Conversion Price (as defined below) and by surrender of the shares so to be converted as provided herein. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into that number of fully paid and non-assessable shares of Common Stock obtained by dividing \$1.00 by the Series A Conversion Price (as defined below) and by surrender of the shares so to be converted as provided herein.

b. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective applicable Conversion Price (as defined below).

c. (1) In order for a holder of Preferred Stock to convert shares of Preferred Stock into shares of Common Stock or into shares of Series C-2 Preferred Stock as provided in Section 5.a. such holder shall surrender the certificate or certificates for such shares of Preferred Stock, at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of shares of the Preferred Stock represented by such certificate or certificates. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"). The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Preferred Stock a certificate or certificates for the number of shares of Common Stock or Series C-2 Preferred Stock, to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(2) The Corporation shall, at all times when any Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the

conversion of all outstanding Preferred Stock. The Corporation shall, at all times when Series C-1 Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued Series C-2 Preferred Stock, for the purpose of effecting the conversion of up to 6,000,000 shares of Series C-1 Preferred Stock, such number of shares of Series C-2 Preferred Stock as shall from time to time be sufficient to effect the conversion of up to 6,000,000 shares of Series C-1 Preferred Stock.

(3) Upon any such conversion, no adjustment shall be made for any accrued and unpaid dividends on the Preferred Stock surrendered for conversion or, with respect to dividends with a record date prior to the Conversion Date, on the Common Stock or Series C-2 Preferred Stock delivered upon conversion; provided, however, that upon any conversion of shares of Series C-1 Preferred Stock into shares of Series C-2 Preferred Stock, appropriate adjustment shall be made so that the holders of such shares of Series C-2 Preferred Stock received upon conversion shall be entitled to receive any dividends on the shares of Series C-1 Preferred Stock so converted that are accrued but unpaid as of the date of conversion, but shall not be entitled to receive any dividends on the shares of Series C-2 Preferred Stock received upon such conversion that have accrued prior to the date of conversion.

(4) All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote and to receive payment of any accrued and unpaid dividends thereon shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock or Series C-2 Preferred Stock in exchange therefor. Any shares of Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Preferred Stock accordingly.

d. The term "Series C Conversion Price" shall mean \$0.4123, as adjusted in accordance with the provisions of this Section 5.d. and with Section 6. The term "Series B Conversion Price" shall mean (a) prior to the Original Issue Date (as defined in Section 6 below) of the Series C Preferred Stock, \$2.94, and (b) from and after the Original Issue Date of the Series C Preferred Stock, \$1.76, in each case as adjusted in accordance with the provisions of this Section 5.d. The term "Series A Conversion Price" shall mean \$1.00, as adjusted in accordance with the provisions of this Section 5.d. The term "Conversion Price" shall mean the Series C Conversion Price, the Series B Conversion Price or the Series A Conversion Price, as appropriate. The applicable Conversion Price shall be adjusted from time to time as follows:

(1) In case the Corporation shall hereafter (i) pay a dividend or make a distribution on the Common Stock in shares of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a greater number of shares, (iii) combine its outstanding shares of Common Stock into a smaller number of shares, or (iv) issue by reclassification of the Common Stock any shares of capital stock of the Corporation, the Conversion Price in effect immediately prior to such action shall be adjusted so that the holder of any share of Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock or other capital stock of the Corporation which he, she or it would have owned or been entitled to receive immediately following such action had such share been converted immediately prior

thereto. An adjustment made pursuant to this subdivision (1) shall become effective immediately after the record date, in the case of a dividend or distribution, or immediately after the effective date, in the case of a subdivision, combination or reclassification. If, as a result of an adjustment made pursuant to this subdivision (1), the holder of any shares of Preferred Stock thereafter surrendered for conversion shall become entitled to receive shares of two or more classes of capital stock or shares of Common Stock and other capital stock of the Corporation, the Board of Directors (whose determination shall be conclusive and shall be described in a statement filed with the conversion agent by the Corporation as soon as practicable) shall determine the allocation of the adjusted Conversion Price between or among shares of such classes of capital stock or shares of Common Stock and other capital stock.

(2) All calculations under this Section 5.d shall be made to the nearest 1/100th of a cent or to the nearest 1/100th of a share, as the case may be. Anything in Section 4.g to the contrary notwithstanding, the Corporation shall be entitled to make such reduction in the Conversion Price, in addition to those required by this Section 5.d, as it in its discretion shall determine to be advisable in order that any stock dividend, subdivision, combination or reclassification made by the Corporation to its stockholders shall not be taxable to the recipients.

(3) In the event that at any time as a result of an adjustment made pursuant to subdivision (1) above, the holder of any share of Preferred Stock thereafter surrendered for conversion shall become entitled to receive any shares of the Corporation other than shares of Common Stock, thereafter the applicable Conversion Price of such other shares so receivable upon conversion of any share shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in this Section 5.d and, with respect to the Series C Preferred Stock, Section 6.

e. If the Common Stock issuable upon the conversion of the Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend or other distribution provided for above, or a reorganization, merger, consolidation or sale of assets provided for below), then and in each such event the holder of each such share of Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change, by holders of the number of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

f. In case of any consolidation or merger of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation (other than a consolidation, merger or sale which is treated as a liquidation pursuant to Section 2), each share of Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Preferred Stock would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate

adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 5 set forth with respect to the rights and interest thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 5 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock.

g. In the event:

(1) that the Corporation declares a dividend (or any other distribution) on its Common Stock or Preferred Stock payable in Common Stock or other securities of the Corporation;

(2) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation; or

(3) that the Corporation shall take any other action that would require any adjustment in the applicable Conversion Price pursuant to this Section 5;

then the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of the Preferred Stock, and shall cause to be mailed to the holders of the Preferred Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least 10 days prior to the record date specified in subdivision (a) below or 20 days before the date specified in subdivision (b) below, a notice stating:

(a) The record date of such dividend or other distribution, if a record is not to be taken, the date as of which the holders of Common Stock or Preferred Stock of record to be entitled to such dividend or other distribution are to be determined; or

(b) The date on which such subdivision, combination, reclassification, liquidation, dissolution or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such subdivision, combination, reclassification, liquidation, dissolution or winding up.

6. Further Adjustments to Conversion Price.

a. *Special Definitions.* For purposes of this Section 6, the following definitions shall apply:

(i) "*Options*" mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(ii) "*Original Issue Date*" shall mean the date on which the first share of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock was issued, respectively.

(iii) "*Convertible Securities*" shall mean any evidences of indebtedness, shares (other than the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and Common Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(iv) "*Additional Shares of Common Stock*" shall mean all shares (including reissued shares) of Common Stock issued (or, pursuant to paragraph 6.c., deemed to be issued) by the Corporation after the Original Issue Date, other than:

(A) shares of Common Stock issued upon conversion of the Preferred Stock authorized herein;

(B) shares of Preferred Stock or Common Stock issued upon exercise or conversion of any options, warrants or other Convertible Securities outstanding as of the Original Issue Date of the Series C Preferred Stock, and any shares of Common Stock or Series C-2 Preferred Stock issued upon conversion or any such shares of Preferred Stock;

(C) up to the greater of 10,400,000 shares of Common Stock or 13.2% of the Corporation's outstanding Common Stock, on a fully diluted, as converted basis (including any of such shares which are repurchased) issued to officers, directors, employees and consultants of the Corporation pursuant to a stock option plan and similar arrangements or transactions approved by the Board;

(D) as a dividend or distribution on any Preferred Stock or any event for which adjustment is made pursuant to Section 5;

(E) up to the greater of 1,964,509 shares of Common Stock, or 2.5% of the outstanding Common Stock of the Corporation, on a fully diluted, as converted basis, issued to landlords, lenders, lessors or vendors pursuant to transactions approved by the Board;

(F) any shares of capital stock of the Corporation issued in connection with acquisitions by the Corporation of other companies or businesses which are approved by the Board; and

(G) up to the greater of 3,929,018 shares of Common Stock, or 5% of the outstanding Common Stock of the Corporation, on a fully diluted, as converted basis, issued in connection with other strategic investments approved by the Board.

b. *No Adjustment of Conversion Price.* No adjustment in the Conversion Price of any series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price of such series in effect on the date of and immediately prior to such issue.

c. *Deemed Issuance of Additional Shares of Common Stock.* In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class

of securities entitled to receive any such Options or Convertible Securities, then the shares of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to paragraph 6.e. hereof) of such Additional Shares of Common Stock would be less than the Series C Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(i) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(ii) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series C Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(iii) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Series C Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

- (A) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the

consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(iv) no readjustment pursuant to clause (ii) or (iii) above shall have the effect of increasing the Series C Conversion Price to an amount which exceeds the lower of (i) the Series C Conversion Price on the original adjustment date, or (ii) the Series C Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(v) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price of any series of Preferred Stock shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the manner provided in clause (iii) above.

(d) *Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.* In the event that after the Original Issue Date for the Series C Preferred Stock, this Corporation shall issue Additional Shares of Common Stock for a consideration per share less than the Series C Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, the Series C Conversion Price shall be reduced, concurrently with such issue, to a price equal to the consideration per share received by the Corporation for such Additional Shares of Common Stock.

e. *Determination of Consideration.* For purposes of this Section 6, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(i) *Cash and Property.* Except as provided in clause (ii) below, such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board; provided, however, that no value shall be attributed to any serviced performed by any employee, officer or director of the Corporation; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, the proportion of such consideration so received with respect to such Additional Shares of Common Stock will be computed as provided in clauses (A) and (B) above, as determined in good faith by the Board.

(ii) *Options and Convertible Securities.* The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 6(c), relating to Options and Convertible Securities, shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

f. *No Impairment.* The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of Section 6 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

g. *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to Section 5(d) or Section 6, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as applicable.

h. *Miscellaneous.*

(i) All calculations under this Section 6 shall be made to the nearest one hundredth (1/100) cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(ii) The holders of at least 50% of the outstanding shares of Preferred Stock of any series of Preferred Stock shall have the right to challenge any determination by the Board of fair value pursuant to this Section 6, in which case such determination of fair value shall be made by an independent appraiser selected jointly by the Board and the challenging parties, the cost of such appraisal to be borne equally by the Corporation and the challenging parties.

(iii) No adjustment in the Series A Conversion Price, the Series B Conversion Price or the Series C Conversion Price need be made if such adjustment would result in a change in such Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in such Conversion Price.

7. Mandatory Conversion.

a. All shares of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock then outstanding will automatically convert into shares of Common Stock, at the then effective Series C Conversion Price, Series B Conversion Price and Series A Conversion Price, respectively, pursuant to Sections 5 and 6, upon (i) the written consent or affirmative vote of the holders of at least 80% of the then outstanding shares of Preferred Stock (as calculated on an as converted basis), given in writing or by vote at a meeting, consenting or voting (as the case may be) as one class or (ii) the closing of the sale of shares of Common Stock in an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of securities for the account of the Corporation to the public with aggregate gross proceeds to the Corporation of not less than \$20,000,000 (before deducting underwriting commissions and expenses) and a per share price of not less than \$3.00 per share (proportionately adjusted for stock splits, combinations, stock dividends, reorganizations and similar events).

b. All holders of record of shares of Preferred Stock will be given at least 10 days' prior written notice of the estimated date and place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 7 and prompt written notice of the actual date fixed for such mandatory conversion after such date is determined. Such notices will be sent by first class or registered mail, postage prepaid, to each record holder of Preferred Stock at such holder's address last shown on the records of the transfer agent for the Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). On or before the date fixed for conversion, each holder of shares of Preferred Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 7. On the date fixed for conversion, all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote, will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any unpaid dividends thereon accruing after the date fixed for conversion. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. The conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities. As soon as practicable after the date of such mandatory conversion and

the surrender of the certificate or certificates for Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, upon his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section 5.b in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

c. All certificates evidencing shares of Preferred Stock that are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date such certificates are so required to be surrendered, be deemed to have been retired and canceled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action as may be necessary to reduce the number of shares of authorized Preferred Stock accordingly.

ARTICLE V

BOARD POWER REGARDING BYLAWS

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind the by-laws of this Corporation.

ARTICLE VI

ELECTION OF DIRECTORS

Elections of directors need not be by written ballot unless the by-laws of the Corporation shall so provide.

ARTICLE VII

LIMITATION OF DIRECTOR LIABILITY

To the fullest extent permitted by the Delaware General Corporation Law as the same exists or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to this Corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after the date of the filing of this Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. No repeal or modification of this Article VII by the stockholders shall adversely affect any right or protection

of a director of the Corporation existing by virtue of this Article VII at the time of such repeal or modification.

ARTICLE VIII

CORPORATE POWER

Except as otherwise set forth herein, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

ARTICLE IX

CREDITOR COMPROMISE OR ARRANGEMENT

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

IN WITNESS WHEREOF, the Corporation has caused this Second Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer this 22nd day of December, 2000.

eCash Technologies, Inc.

By: 

Andrew G. Haring, Secretary